

A Penchant for Secrecy Remains

Agencies Find New Ways to Block Freedom of Information Act

By George Lardner Jr.
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Some federal agencies are inventing their own excuses to duck the freedom-of-information law.

On March 3, the Selective Service System refused to make public even the annual report to Congress that streamlined freedom-of-information law requires.

"The document requested is a statutory agency report," Selective Service officials decreed in weighty tones. "As such, it does not constitute, in our opinion, public information as contemplated by the Freedom of Information Act."

Furthermore, the Ohio University journalism professor who had asked for the report was informed, we do not believe that release of such report by this agency would be proper. Your request is therefore denied."

It took a scathing Senate floor speech by Edward M. Kennedy (D-Mass.) to unplug the document, one of approximately 90 that federal agencies and departments has submitted to Capitol Hill. As chairman of the Senate Subcommittee on Administrative Practice and Procedure, Kennedy was one of the key architects—and remains a chief overseer—of the 1974 amendments to the Freedom of Information Act. The law is supposed to make disclosure of government documents the rule rather than the exception.

Kennedy said the Selective Service episode showed "so blatant a disregard of the law" that it could well warrant the bureaucratic penalties that the 1974 freedom-of-information amendments prescribed for "arbitrary and capricious" denials of information.

Although the law still permits withholding of records that fall into any of nine exempt categories—from national defense to geological data—Kennedy caustically observed that "nowhere do

ords, the release of which the agency does not consider 'proper.'"

Selective Service general counsel Petter T. Straub, whose office had made the initial denial, finally relented May 12, in a terse, two-sentence letter saying that the request had been "re-evaluated."

The Kennedy subcommittee's chief counsel, Thomas Susman, said the Selective Service incident was by no means unique. Although it has been more than a year since Congress sharply narrowed the old law's loopholes (for so-called "national security" and investigative files) and provided new ways of overcoming government foot-dragging, Susman said "the old practices [of secrecy] are alive and well."

He said the National Science Foundation also sought to keep secret part of its annual freedom-of-information report: a legal opinion from general counsel Charles F. Brown telling the National Science Board what it might have to make public under the new law. (Brown assured board members that "the bulk of the information at the executive session" meetings would continue to be "exempt from disclosure.")

The penchant for secrecy is reflected at other agencies in various ways. The Central Intelligence Agency, critics say, likes to invoke the specter of search fees running into the thousands of dollars to discourage requests. The State Department seized on the Privacy Act as a classification device and tried to use it to restrict dissemination of a list of State Department employees who had authority to classify documents.

"They maintained the list shouldn't be released because that would somehow violate the Privacy Act," said Timothy H. Ingram, staff director of the House Subcommittee on Government Information and Indi-

vidual Rights. He said the notion was absurd. "The list deals with the duties of employees in their official capacity," Ingram said. "That's got nothing to do with the Privacy Act."

At the CIA, the agency actually charged less than \$2,000 in search and copying fees during all of 1975, but CIA freedom-of-information coordinator Gene Wilson acknowledges using the prospect of huge bills to trim back onerous demands.

"If no fee were involved, it would make it impossible to talk to a requester and get him to narrow his request," Wilson said. "For one particular request, we established that it would cost \$60,000—just for the search alone. It involved going through mountains of documents to find just one. FOI, without some controls, could run away."

Last year, under Director William Colby, the CIA waived many fees in accordance with public interest provisions of the law applicable to disclosures that are deemed to benefit the general public. But fresh complaints are building.

"The CIA seemed to be making a serious effort at the start to comply—under Colby," said Mark Lynch of the nonprofit Freedom of Information Clearinghouse here. "But that's changed. Recently, they've started to charge search fees for every request, even for stuff they've already dug up for congressional committees."

Wilson insists that the CIA is improving even though outsiders might not notice. "They teach you here for 20 years how to keep information secret, how to keep it within the walls," he said, "and then along comes a law that says, 'Turn around, review what can go out, make it public.'"

He said the agency is starting to do it, but it happens not too perceptibly.

"If I were with the American Civil Liberties Union," Wilson allowed, "I'd say we were stonewalling."

Critics of the Internal Revenue Service say the IRS forces them to file lawsuits again and again to obtain essentially the same kind of documents the courts decreed they should have. The FBI, the National Security Agency and the Justice Department have all been accused of denying the existence of documents that have later been unearthed by other agencies.

For the government, the burdens imposed by the Freedom of Information Act remain considerable. Officials at the Office of Management and Budget acknowledge that they have thus far been trying to make government agencies "swallow the cost" of complying with the law. But few agencies seem inclined to ask for freedom-of-information money anyway, preferring instead to attack the 10- and 20-day deadlines in the law as impossible to meet.

(Despite the tight-fistedness at OMB, Congress recently allocated extra money for 202 additional positions at the FBI for the sake of "complying with the Freedom of Information Act and the Privacy Act." The bureau has a nine-month backlog of requests under the two laws, but rather than add more people, it apparently plans to use most of the extra money to refill the positions it had raided to put together the FOI unit it has now.)

"Mr. [Deputy Assistant Attorney General Harold] Tyler has said what's allocated now is more than a generous allocation of resources," Quinlan Shea, head of the Justice Department's Appeals Unit, said of the department's—and the FBI's—efforts. "That's it."

There are always some government officials complaining that

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